1 (3) Official

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 411 / 2005

PETITIONER :**D.S Awasthi**
S/o Late Shri S.P.Awasthi
Aged about 56 years
Occupation- Service, working as Upper Division Clerk, R/o- Old Government Saw Mill Kumharpara, Jagdalpur, Dist- Baster (C.G)

Versus

RESPONDENTS

1. **State of Chhattisgarh**
Through the Secretary,
Forest Department, Mantralaya
D.K.S. Bhawan, Raipur (C.G)

2. Director,
Kanger Valley National Park
Jagdalpur, Dist- Baster (C.G)

P.R. No. 403/05
Presented by Shri M.C. Dhruvvanshi
dated 21.03.05

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT ORDER OF DIRECTION TO DO JUSTICE IN THE MATTER.

XI-HC-78

(28)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 411/2005 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

09.03.2005

Shri H.S. Ahluwalia, counsel for the petitioner.

Shri U.N.S. Deo, Govt. Advocate for the State on advance copy.

Heard.

The petitioner has challenged the validity of transfer order dated 27.10.2004 (Annexure-P/3) by which he has been transferred from Jagdalpur to Beejapur.

The submission of learned counsel for the petitioner is that the petitioner has some urinary problem, which needs regular surgical treatment. It is further submitted that earlier the petitioner had filed a W.P. No. No. 4181/2004 before this Court, which was disposed of vide order dated 25.11.2004 and the petitioner was given an opportunity to file a detailed representation before the concerned authority, raising his grievances within 15 days, and if such representation is filed the concerned authority was directed to decide the same on its own merits in accordance with law as early as possible preferably within two months from the date of receipt of the representation. Learned counsel also submitted that in pursuance of the said order dated 25.11.2004, the petitioner has filed a representation but the same has not been decided so far.

Since the representation has not been decided, the petitioner came up in the second round before this Court.

XI-HC-78

(26)

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I have heard learned counsel for the parties at length and also perused the record.

In the series of judgments, the Hon'ble Apex Court has held that the transfer is an incidence of service and is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the transfer. Referring to the decisions reported in ***1995 (Suppl) 4 SCC 169 (Ambani Kanta Ray –Vs- State of Orissa)*** and ***AIR 1993 S.C. 2444 (Union of India –Vs- S.L. Abbas)***, the Hon'ble Apex Court has laid down this law in the matter of ***Kendriya Vidyalaya Sangathan –Vs- Damodar Prasad Pandey and others reported in 2004 AIR S.C.W. 5563***. In this judgment itself, the Apex Court in later part of Para 4 mentioned the observations rendered in the matter of ***Union of India & others –Vs- Janardan Debanath and another (2004) 4 SCC 245*** that:-

> *"No government servant or employee of a public undertaking has any legal right to be posted for ever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such*

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आदेश पत्रक (पूर्वानुबद्ध)

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transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned."

The Hon'ble Apex Court further referred to the decision reported in the matter of ***National Hydroelectric Power Corpn. Ltd., -Vs- Shri Bhagwan. (2001) 8 SCC 574.***

The above series of judgments pronounced by the Apex Court at various points of time go to show that a very limited scope is given for interference with an order of transfer passed by the competent authority. If the jurisdiction and the authority are not challenged nor there is any challenge on the ground of violation of any statutory rules then unless the malafide, arbitrariness or extraneous consideration are established by coming forward with definite pleadings and by bringing some evidence on record, it cannot be said that the transfer which has been shown to be purely on the administrative exigency will not be accepted to be a normal transfer.

If the authority and jurisdiction are not under challenge and the challenge is also not made on the ground of malafide, arbitrariness or extraneous considerations, then this Court is not inclined to interfere with the order of transfer of the petitioner

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whereby he has been transferred from Jagdalpur to Beejapur after a long period of more than 11 years.

The petition has no merits and the same is dismissed at the motion stage itself.

However, if the competent authority wants to take decision on the representation of the petitioner in pursuance to the order dated 25.11.2004 passed by this Court then observation made in this order will not come to way of the authority.

Certified copy as per rules.

Sd/-
Sunil Kumar Sinha
Judge